Supreme Court, U.S.
FILED
SEP 3 1971
E. ROBERT SEAVER, CLERK

# In the Supreme Court of the United States

OCTOBER TERM, 1970

NO. 1452

PAUL STEFFEN ZORNER,

Petitioner,

v.

STATE OF OREGON,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of the State of Oregon

## BRIEF FOR RESPONDENT IN OPPOSITION

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## PREVIOUS OPINION

## JURISDICTION

## QUESTION PRESENTED

## CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

## STATEMENT OF THE CASE

Respondent accepts as accurate the petitioner's statement of the opinion below, jurisdiction, question presented, constitutional and statutory provisions involved and the case.

## REASONS FOR DENIAL OF THE WRIT

### The Writ Would Have Minimal Effect

As petitioner points out (Pet. 6), the issue of whether the Sixth Amendment requires a jury trial is already pending before the Supreme Court in *In Re Burrus*, No. 128, and *McKeiver v. Pennsylvania*, No. 322, both of which were argued on December 10, 1970. The issue will be resolved whatever action is taken on this petition. Thus a grant of certiorari in the case at bar will have no effect beyond this individual case, except, possibly, as a vehicle for additional briefing and argument.

If there is negligible significance in other cases, there is also precious little relief to be granted in the very case at bar. As petitioner indicates, he is no longer within the jurisdiction of the juvenile court (Pet. 7) inasmuch as his six month probationary period has expired. He suffers no disability by virtue of the expired wardship. Oregon juvenile files are secret—although, inconsistently, the appellate decision is titled with the name of the juvenile. Petitioner's assertion that "his right to enter certain professions may be impaired" is speculative at best and is equally true of every petitioner from a juvenile wardship or an adult conviction.

Given the minimal effect that a grant of certiorari will have upon this and other cases, then this case should be controlled by such rules of retroactivity as the Court fashions in Nos. 128 and 322 if it is decided there that jury trials are mandated for juvenile proceedings.

**Jury Trials for Juveniles Are Not Desirable**

*In Re Gault*, 387 US 1 (1967) reasoned that many juvenile correctional facilities are effectively penal and therefore the process by which society sends juveniles to such facilities must provide those rights which, as a matter of due process, are appropriate to juvenile courts.

If the disappointing reality of juvenile facilities has been penal instead of benevolent, then it does the juvenile no good to accord to him more due process on his legal path to the facility. The state will "convict" juveniles with the same regularity that it convicts adults. The resources of the law would be better put to reform of juvenile institutions than to the adornment of the proceeding with all the trappings of adult criminal trials.

*Gault* does not convert juvenile proceedings into adult criminal trials for under-age defendants. In obviating the worst of juvenile proceedings, *Gault* does not also eliminate the best by full scale duplication of criminal procedure. Although jury trial is among the criminal procedure due process package, *Duncan v. Louisiana*, 391 US 145 (1968), it does not follow that it is a necessary or desirable part of the juvenile court due process package. Jury trial is required by due process only if it is functionally desirable in the juvenile setting. As one commentator better stated the proposition:

> "Other constitutional rights, both state and federal, need to be scrutinized with the following questions in mind. What do they have to offer to the juvenile court system? Will they merely make it more formal or will they serve a real need? At least

> one author has urged that 'children accused of acts that would be crimes if committed by adults are entitled as of constitutional right in the juvenile courts to all constitutional safeguards recognized in that jurisdiction to those charged with crimes in the usual criminal courts.' This is too far reaching. What is needed is a selective due process adapted to the peculiar needs of a juvenile court. The reasoning in *Gault* can be analyzed and expanded in order to determine what additional rights, if any, will fall into this category." (Footnote omitted) *Constitutional Rights of Juveniles*, 9 Wm & Mary L Rev 492, 500 (1967)

Each of the rights accorded a juvenile by *Gault* and *In Re Winship*, 397 US 358 (1970) is functionally justifiable as serving a sound judicial purpose. The rights to notice, counsel, confrontation, proof beyond reasonable doubt, transcript and appellate review each contribute substantially to the quality of the fact-finding process and effectively inhibit the possibility of administrative or judicial arbitrariness. They allow the fact-finder to perform that function directly and informedly. The protection against self-incrimination contributes to the integrity of the investigative process. Jury trial, however, does not rise to the same level of functional necessity in a juvenile court setting.

Use of a jury must be evaluated on its own merits in the setting of juvenile court desiderata, just as *Gault* considered the appropriateness of each right. What need would a jury obviate; what present benefit would it dilute? The petitioner has demonstrated no such need, but many benefits would be lost.

Jury trial, more than any other procedural device, would dilute the primary aim of juvenile process. It would totally change the character of the informal, confidential juvenile hearing. Instead of interested parties and counsel gathered in chambers, the proceeding would be moved to the formal atmosphere of the courtroom with elevated judge, the parties and counsel below partitioned by adversary tables, and the judge and youth separated by 12 on-looking strangers. Neither the setting nor the clash and clamor of a jury trial would be beneficial to the child or conducive to the establishment of rapport. The value of the rapport between judge and juvenile, facilitated by the informal atmosphere of the juvenile court, is acknowledged by *Gault*.

There is no substantial reason to deem the jury a superior fact-finder to an experienced juvenile court judge. The requirement that a jury be of a defendant's "peers" is problematical. Jurors are valued because they bring with them a range of generalized experience against which they judge the evidence. In a juvenile proceeding, however, a more specific sort of experienced understanding is required. A juvenile judge can acquire such background through years of dealing with every variety of juvenile, while a typical juror's special background would be limited to his experience, good or bad, with his own family or to public media accounts of how each current generation "is going to hell." The sort of understanding hearing which is peculiarly desirable in juvenile proceedings is better available before the judge.

While the essential purpose of trial by jury is to interpose protection of criminal defendants from the oppressiveness of the Crown, *Williams v. Florida*, 399 US 88, 99-100 (1970), a judge would better shield a child from the oppressiveness of the adult community. A judge can best decide whether a wardship is required.

The essentially protective purpose of jury trial is satisfied by other devices. The *Gault* and *Winship* safeguards, particularly comprehensive appellate review, have diminished the degree of importance of the early device of jury trial as a safeguard. Its newly marginal value should be weighed against competing desiderata in juvenile cases which are not as meaningful in adult cases, e.g., protection of the youth from the stigma of public prosecution; a setting which facilitates a benevolent relationship and protective atmosphere. These competing benefits are not otherwise achieved and are thus to be preferred. *Cf. Constitutional Rights of Juveniles*,9 Wm & Mary L Rev 492 at 500-501 (1967).

## CONCLUSION

Because of the minimal impact of a Supreme Court decision of the instant case and because jury trials should not be constitutionally required for juveniles, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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